

CALIFORNIA STATE BOARD OF EQUALIZATION

CURRENT LEGAL DIGEST NO. 1072

May 15, 2006

Revise Annotation 170.0195 **Statute of Limitations**. If a timely notice of determination has been issued for sales tax, it is also effective as to use tax and vice versa. However, a timely notice of determination issued against one party to a transaction does not toll the statute of limitations against any another party to the transaction who may be held liable for the tax. [5/26/93](#), [5/31/94](#), [\(Am. 2006-1\)](#).

[305.0028.200](#) **Off-Reservation Sales to Indians**. [Sales and Use Tax Regulation 1616](#) requires that possession and title (ownership) to tangible personal property must pass to the Indian purchaser on a reservation in order for the sale to be exempt from tax. In general, ownership of the property transfers upon delivery if delivery is made by facilities of the retailer, and ownership transfers upon shipment if delivery is made by mail or carrier. If the contract authorizes or requires the retailer to send the property to the purchaser, but does not require the retailer to deliver it at destination, the retailer completes its performance with reference to the physical delivery of the property at the time and place of shipment. If the contract expressly requires delivery at destination, the retailer completes its performance with reference to the physical delivery of the property on tender to the purchaser at the destination. When delivery of the property is by facilities of the retailer, title passes when the property is delivered to the purchaser at the destination unless there is an explicit written agreement executed prior to the delivery that title is to pass at another time.

[When delivery to an Indian purchaser is by contract carrier or common carrier, the following conditions must be met in order for title and possession to pass to the Indian purchaser on the reservation: \(1\) the contract of sale \(or an equivalent document\) must expressly contain an F.O.B. reservation clause or equivalent provision; \(2\) title cannot have been passed to the purchaser prior to delivery on the reservation; and \(3\) the goods must in fact be delivered to the Indian purchaser on the reservation as specified in the contract of sale. If all of these conditions are met, then the sale is exempt from sales tax. 2/6/06. \(2006-2\).](#)

Delete Annotation 325.0120, **Servicing of Machines by Agent of Branch Office of Seller** (4/21/52), because it conflicts with Regulation 1620(a).

Note: The new proposed annotations contained in this CLD are drafts and may not accurately reflect the text of the final annotation.

335.0089.700 Use of MTE by Lessor. A taxpayer purchases an item of mobile transportation equipment (MTE) for use in California and makes a timely election to pay use tax measured by the fair rental value (FRV) pursuant to subdivision (d) of Revenue and Taxation Code section 6094. After leasing the aircraft for some period of time and reporting tax measured by FRV, the taxpayer makes a use of the MTE other than leasing, i.e., a nonconforming use. Subsequent to the nonconforming use, the taxpayer begins to lease the MTE again. Under such circumstances, it is necessary to determine whether the taxpayer has established that its use of the MTE was sufficiently limited to leasing for purposes of making a valid election to pay tax measured by FRV under the requirements of section 6094(d). If a valid election has been made, it must also be determined whether the taxpayer has established that the taxpayer has stopped leasing the MTE for such a significant amount of time that the taxpayer has substantively changed its use of the MTE, resulting in the abrogation of the election that would otherwise be irrevocable.

In order to make these determinations, the following six-month test periods apply:

1. A taxpayer has established that it has made a valid election to report tax measured by FRV pursuant to section 6094(d) if the taxpayer can demonstrate that it has limited its use of the subject MTE to leasing for at least the first six months of use. If the taxpayer makes a nonconforming use of the MTE at any time (whether during or after this six-month test period), use tax is due measured by the purchase price of the MTE (but offset by the amount of tax previously reported measured by FRV).

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2. A taxpayer that has made a valid election to report tax measured by FRV has established that it has stopped leasing the MTE (and thereby substantively changed its use of the MTE) when the taxpayer refrains from leasing the MTE for at least the first six months following the nonconforming use. If a taxpayer satisfies the requirements of this second six-month test, then the taxpayer will owe use tax measured by the purchase price of the MTE (with appropriate offsets). To the extent the taxpayer leases the MTE after the expiration of this second test period, the taxpayer will not be obligated to report tax measured by FRV. 12/30/05. (2006-2).

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Delete Annotation 425.0166, **Skin Care Products** (7/30/92) because the facts in the backup letter lead to an ambiguous meaning in the annotation.

Revise Annotation 425.0215 **Blood Monitoring Equipment, ~~Glucose Test Strips and Related Supplies.~~** Blood monitoring equipment, ~~glucose test strips and related supplies, other than insulin and insulin syringes,~~ used by diabetic patients to determine ~~his/her~~ blood sugar levels ~~does~~ not qualify as “medicines” under ~~Section 6369(e), nor under~~ any provision of Section

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6369. The sale of such items ~~are~~is subject to sales tax although they ~~items~~ may be prescribed by the patient's physician.

Any glucose solution either taken by or applied to the patient to determine glucose tolerance qualifies as a medicine. As such, tax does not apply to the glucose itself and any substance or preparation used to cleanse the patient's skin prior to performing tests. 8/20/85; 12/5/90; 8/29/91. (Am. 2006-1).

Note: Regulation 1591.1, effective March 10, 2000, regards the use of glucose test strips and skin puncture lancets, under specified conditions, as a necessary and integral part of the use of insulin and insulin syringes.

425.0915 Vents and Sumps. Vents and sumps are used during heart bypass surgery to keep the operating area clear of blood. Items used temporarily during surgical procedures are excluded from the term "medicines" under Regulation 1529(c)(2). Consequently, sales of vents and sumps are subject to tax. 2/22/06. (2006-2).

460.0028 Excess Tax Reimbursement – Remitting to the Board. Under Revenue and Taxation Code section 6901.5, when it has been determined that excess tax reimbursement has been collected, retailers must either refund the money to the customer(s) or remit it to the State. Section 6901.5 presupposes that the retailer has not yet remitted the tax to the Board.

In circumstances where the retailer has filed its returns for the applicable tax quarter and remitted the moneys to the State, it has complied with its duties under the Sales and Use Tax Law as to sales tax reimbursement. Once the retailer has remitted the tax reimbursement to the Board, the sole legal avenue available for determining the proper application of tax is for the retailer to submit a claim for refund under Section 6901, et seq. The Board may only grant a tax refund to the person who paid the tax. If the Board were to deny the claim for refund, the retailer could pursue an action in court for refund of sales tax under Section 6933. There is no provision in the law for an action on the part of a nontaxpayer to dispute the application of tax. 1/20/06. (2006-2).

Delete Annotation 477.2300, **Materials Used Experimentally in Development of Prototype** (8/4/71) because it is superseded by Regulation 1501.1.

495.0050 Blood and Tissue Banks. Any available exemption for sales of human body parts under Revenue and Taxation Code section 33 applies only to the transfer of blood products

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or human body parts held by a “bank.” If the transferor does not qualify as a “bank” for the purposes of Section 33, no exemption is available. A “bank,” for the purposes of Section 33, is an organization that processes, stores, and distributes in a not-for-profit transaction blood products or human body parts pursuant to statute. Organizations that prepare property derived from human bodies for commercial sale do not qualify as “banks” within the meaning of Section 33. 1/20/06. (2006-2).

540.0315 Human Proteins and Enzymes. Revenue and Taxation Code Section 33 specifies that “human whole blood, plasma, blood products, and blood derivatives, or any human body parts held in a bank for medical purposes, shall be exempt from taxation for any purpose.” Human body part derivatives, such as proteins and enzymes, are not “human body parts” within the meaning of Revenue and Taxation Code section 33. Furthermore, the exemption from sales and use tax provided in Section 33 applies only to blood products and human body parts “held in a bank for medical purposes....” (Emphasis added.) If the transferor does not qualify as a “bank” for the purposes of Section 33, no exemption is available.

For purposes of Section 33, a “bank” is an organization that processes, stores, and distributes in a not-for-profit transaction blood products or human body parts pursuant to statute. Organizations that prepare property derived from human bodies for commercial sale do not qualify as “banks” within the meaning of Section 33. 1/20/06. (2006-2).

550.0115 Grocery Stores – Sales of Soda Fountain Drinks. A national drug store chain sells soda fountain drinks in its stores. There are no facilities for consumption of the drinks at the stores selling the drinks. The fact that customers may choose to consume the drinks while shopping in the store does not make the sale of the drinks taxable as being sold for consumption at ‘facilities of the retailer’ under Regulation 1603(f). 11/1/05. (2006-2).

Delete Annotation 570.0417, **Trade Show Exhibits.** The annotation contains an incorrect law case citation and the analysis of the case is not accurate.

800.1455 Initiative Process – Enactment of Tax. Revenue and Taxation Code sections 7285.90 through 7285.92 authorize a city to enact transactions district taxes without having to obtain special authority from the legislature for each tax. However, as provided by these sections, cities are not granted any more authority to levy district taxes than that granted to the counties. Therefore, a city cannot enact a district tax pursuant to action by the voters through the initiative process prior to the governing body enacting a district tax ordinance.

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The tax must be enacted by the city council first and subsequently approved by the voters.
2/9/06. (2006-2).

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